

LEGAL GUIDE TO DOMESTIC VIOLENCE ORDERS IN THE AUSTRALIAN CAPITAL TERRITORY

Introduction

Technology-facilitated stalking and abuse is the use of technology (such as the internet, social media, mobile phones, computers, and surveillance devices) to stalk and perpetrate abuse on a person.

Such behaviour includes:

- Making numerous and unwanted calls to a person's mobile phone
- Sending threatening and/or abusive messages (text messaging, Whatsapp, Snapchat, Facebook messaging, Twitter)
- Hacking into a person's email or social media account to discover information about them
- Hacking into a person's email or social media account to impersonate them and send abusive messages to family/friends of that person
- Using surveillance devices to spy on a person
- Using tracking devices to follow a person
- Sharing, or threatening to share, intimate pictures of a person

This legal guide is one of a set of three guides that looks at areas of law relevant to people experiencing technology-facilitated stalking and abuse.

Legal Guide to Domestic Violence Orders

This guide looks at how people can obtain protection orders from the court to protect them from technology-facilitated stalking and abuse. In the ACT these protection orders are called **Domestic Violence Orders (DVOs)**.

For information on other areas of law see:

Legal Guide to Surveillance Legislation in the ACT

This guide looks at what the law says about **surveillance devices** – when it is an offence to use them and what the restrictions are on sharing information/videos/pictures obtained through the use of surveillance devices.

Legal Guide to Relevant Criminal Offences in the ACT

This guide looks at the various **criminal offences** that may apply to a person who is perpetrating technology-facilitated stalking and abuse.

DISCLAIMER: The use of technology-facilitated violence is a developing area of the law. The legal information, examples and scenarios contained in the guide are intended to explain the law in general terms only and are not legal advice. They cannot be relied upon or applied by readers in their own cases. Each set of circumstances needs to be looked at individually. You should seek legal advice about your own particular circumstances.

Terminology

Language of 'Victim' vs 'Survivor'

Some women who are experiencing, or who have experienced, domestic violence use the term 'victim' of domestic violence to describe themselves. Others believe the term 'survivor' of domestic violence more accurately reflects their experience.

Whilst acknowledging that each woman's experience is unique and individual to her circumstances, for consistency, these guides will refer to women who are experiencing, or who have experienced, domestic violence as 'victims' of domestic violence.

Gender and Language

While domestic violence can happen in many circumstances (including in non-heterosexual relationships), in the vast majority of reported domestic violence cases men are the perpetrators and women the victims.

For this reason these guides use 'he' to refer to perpetrators and 'she' to refer to victims. This is not intended to exclude other situations.

Criminal Offence (or offence)

A criminal offence is an offence against the State. It is commonly referred to as 'breaking the law'.

Summary offence

Less serious offences (such as minor theft), are known as summary offences. Summary offences normally have a maximum penalty of no more than 2 years imprisonment or are not punishable but imprisonment at all.

Indictable (serious) offence

More serious offences (such as murder, manslaughter, sexual assault) are known as indictable offences. Indictable offences are punishable by imprisonment exceeding 2 years.

Charge

When a person is charged with an offence, it means that the police have formally accused that person of committing an offence.

Conviction

When a person is convicted of an offence, it means that person has either pleaded guilty to committing the offence, or a court has found that person guilty of committing the offence.

Penalty unit

A penalty unit describes the amount payable for a fine.

Penalty units are used instead of dollar amounts because the rate for penalty units is indexed for inflation and may therefore change from time to time.

The dollar amount for one penalty unit is set out in section 133 of the Legislation Act 2001 (ACT) and increases with inflation. As of 2015: one penalty unit = \$150 (for individuals).

Therefore, an offence with a maximum penalty of a fine of 50 penalty units will have a maximum fine of \$7,500.

DOMESTIC VIOLENCE ORDERS

The *Domestic Violence and Protection Orders Act 2008* (ACT) ('the Act') is the piece of legislation (law) in the Australian Capital Territory that allows the courts to make orders protecting people from domestic violence or personal violence.

A person who is experiencing domestic violence ('**aggrieved person**') may apply to the ACT Magistrates Court for a Domestic violence order ('**DVO**') or have a DVO made by the police. A DVO can protect a person by ordering the person against whom the DVO is made ('**respondent**') not to commit further acts of domestic violence against the aggrieved person.

It is important to note that a DVO is a civil order, meaning it is not a criminal charge. However, an application for a DVO may be accompanied by related criminal charges and criminal penalties may apply if a DVO is breached.

1. What are the types of DVOs and when are they made?

A person can apply for an *interim* Domestic Violence Order if they think there is an *immediate risk to their personal safety*. An *interim* order is a temporary order that is in place until a final order is decided at court. The court may make the order if it is satisfied it is *necessary to ensure* the aggrieved person (or their child's) *safety or to prevent property damage*.

An *emergency order* is an urgent order only the police can apply for where they believed that if an order is not made, the respondent may cause *physical injury* or *substantial property damage* to the aggrieved person or their child. For example, if the police are called out to a house for a domestic disturbance, they may apply for an emergency order by telephone for the aggrieved person's protection.

The Magistrates Court may make a *final DVO* against the respondent for the protection of the aggrieved person if it is satisfied on the balance of probabilities (more likely than not) that the *respondent engaged in domestic violence*.

Where can I find this information in the Act?

Please see sections 29, 46, 68 & 69 of the Act.

2. Can technology-facilitated stalking and abuse be a form of domestic violence?

The short answer is **yes**; technology-facilitated stalking and abuse may be a form of domestic violence.

Under the Act, domestic violence includes behaviour done to *harass* or *offend* a person. This is wide enough to cover behaviours such as use of surveillance devices, sharing intimate photos of the person without consent and technology-facilitated stalking (e.g. tracking a person through GPS on their phone).

Further, the *Act* also captures threats to a person, their property or pets that are made, for example, over the phone, email or social media.

Under the Act, domestic violence occurs where a person who is in a domestic relationship with the person does, attempts or threatens to:

- Cause a person physical or personal injury
- Cause damage to a person's property
- Commit a domestic violence offence, for example, breaching a DVO, assault, sexual assault or inflicting grievous bodily harm (see Schedule 1, the Act)
- Harass or offend a person
- Harm a person's pet

Where can I find this information in the Act?

Please see sections 13 of the Act.

3. What is considered a domestic relationship?

Technology-facilitated domestic violence can happen to anyone who was in a domestic relationship. Domestic relationship is defined broadly to include:

- Current or ex-partners (e.g. spouses or de factos)
- Relatives (e.g. brother, aunt, cousin, father, step-brother, etc.)
- Those who have been in an intimate relationship (this does not necessarily mean a sexual relationship)
- Relatives through the current or ex-partner (e.g. in laws such as a brother-in-law, one party's child or parent)
- Those who could be considered relatives according to Aboriginal or Torres Strait Islander custom or tradition

Note: If there is technology-facilitated stalking and abuse, but there was no 'domestic relationship', a person may still be able to apply for a personal protection order under the act.

Where can I find this information in the Act?

Please see sections 15 & 15A of the Act.

4. Who can apply for a Domestic violence order?

An application for a DVO may be made by:

- The police
- An aggrieved person
- A *litigation guardian* if the aggrieved person has a *legal disability* (meaning they are under 18 years or have a mental or intellectual disability that means they cannot apply themselves)

Only the police can apply for an **emergency** DVO.

Applying for a DVO

To apply for a DVO for their (or their child's) protection, they can go to the police and make a statement. The police can make an emergency DVO in some circumstances.

If the police refuse to act or a person feels uncomfortable going to the police, they can apply to the Court for a DVO (see the link to the Domestic violence order Application Form at the bottom of this guide).

They can get legal advice from a community legal centre (e.g. Women's Legal Services ACT), Legal Aid or a private lawyer on applying for a DVO.

Where can I find this information in the Act?

Please see sections 18 & 19 of the Act and the Act's dictionary.

5. How can a Domestic Violence Order protect a person from technology-facilitated stalking or abuse?

The conditions in a DVO depend on the particular circumstances of the matter.

The *Act* sets out what conditions the applicant can apply for which may assist in prohibiting technology-facilitated domestic violence. These include, orders prohibiting the respondent from:

- Being on or near certain premises, e.g. where the person lives, works or is likely to be
- Contacting the person or getting someone else to for them
- Harassing, threatening or intimidating the person or getting someone else to for them
- Damaging their property or getting someone else to for them
- Remaining at any place the aggrieved person/persons may be living, working or visiting

A person can also apply for an order requiring the respondent to return something that belongs to the aggrieved person.

The most useful orders for technology-facilitated stalking or abuse, are order prohibiting the respondent from contacting the aggrieved party and those prohibiting the respondent from harassing, threatening or intimidating the aggrieved person.

For these conditions to be imposed on a final order, the Magistrate must decide they are **necessary** or **desirable**.

A respondent **must** follow the conditions of a DVO. If the respondent breaks any of the DVO conditions (called breaching or contravening the DVO), it is an offence and the police can lay charges against the respondent.

Where can I find this information in the Act?

See section 48 of the Act.

6. How long does a Domestic violence order last?

DVOs can last for up to 2 years unless there are *special or exceptional circumstances*

Where can I find this information in the Act?

See section 55 of the Act.

7. What if a person breaks the conditions of a Domestic violence order by engaging in technology-facilitated stalking or abuse?

When a person does not obey the conditions of a DVO, this is called a **breach** or **contravention** of the DVO. It is an offence to contravene a DVO or an interim DVO. All contraventions should be reported to the police so they can investigate.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

Where can I find this information in the Act?

See section 90 of the Act.

8. Gathering evidence to prove a technology-facilitated stalking or abuse

Sometimes it can be difficult to prove technology-facilitated stalking or abuse. Some tips for gathering evidence to show an IO is necessary or an IO has been contravened include:

- Do not delete text messages, voicemail messages, photos
- Try and save any evidence to a computer/USB flash drive
- Use screenshots (see www.take-a-screenshot.org) and save the image as the date & time it was taken. If taking screenshots of websites, always include the URL in the screenshot
- Keep a diary or voice notes of incidents including dates and times
- Consider giving police written permission to access your phone, computer, Facebook, email account etc. if a matter is being investigated

9. Further help and information

LEGAL ADVICE – At any stage, it is important for a person to obtain legal advice about their situation and the options available to them. Please see the legal services directory on the support page of www.smartsafe.org.au for referrals to the nearest legal service.

Note: certain conduct in relation to technology-facilitated stalking or abuse may constitute a criminal offence. Please see the [Legal Guide on Relevant Criminal Offences](#) and [Legal Guide to Surveillance Legislation](#) for further information.